

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

RANDY GUINN,

Plaintiff,

vs.

Case No: 1:17-cv-11436-TLL-PTM

Hon. Thomas L. Ludington

Mag. Judge Patricia T. Morris

PRAXAIR, INC., FIBA TECHNOLOGIES,  
INC., FIKE CORPORATION, AND  
CHART INDUSTRIES, INC.

Defendants.

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**NOTICE OF HEARING**

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that the attached Unopposed Motion to Compel Production in the above-entitled cause will be brought on for hearing and disposition before Judge Thomas L. Ludington of the U.S. District Court, on a date to be determined by the Court.

Respectfully submitted,

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Dated: January 25, 2019

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
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Plaintiff,

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Case No: 1:17-cv-11436-TLL-PTM  
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**DEFENDANT PRAXAIR, INC.'S**  
**UNOPPOSED MOTION TO COMPEL PRODUCTION**

Defendant Praxair, Inc., through its attorneys Collins Einhorn Farrell PC, asks this Court to enter an order compelling the production of the raw test data from neurological testing performed by Dr. Robert Louis Heilbronner, a clinical neuropsychologist, on plaintiff Randy Guinn. In this case, Dr. Heilbronner has opined that, “directly due to the 12/22/14 incident,” Guinn has suffered numerous cognitive and emotional deficits.<sup>1</sup>

In reaching that opinion, Dr. Heilbronner has admittedly relied on numerous tests that were administered and scored by one of his graduate assistants.<sup>2</sup> Dr. Heilbronner has refused, however, to disclose the raw data underlying those tests

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<sup>1</sup> **Exhibit 1**, Dr. Heilbronner’s Neuropsychological Evaluation, p 5.

<sup>2</sup> See **Exhibit 2**, Dr. Heilbronner’s Deposition Transcript, p 18; see also **Ex. 1**, Dr. Heilbronner’s Neuropsychological Evaluation, pp 3-4.

based on his understanding of legal and ethical principles relative to psychologists—unless there is a court order:

Q. What I'd like to do is mark your entire file as Exhibit No. 2, if that's possible.

A. Well, that's fine, but the caveat that the raw test data is something that I cannot release and will not release to a non-psychologist, according to the Illinois law and the recommendations, if you will, of the American Psychological Association, ethical principles.

Q. I assume you will release it according to a court order from a federal judge, correct?

A. Indeed.<sup>[3]</sup>

Under Federal Rule of Civil Procedure 26(a)(2), a party's experts are undisputedly required to disclose "the facts or data considered by the witness in forming them[.]"<sup>4</sup> The Sixth Circuit Court of Appeals, following "the 'overwhelming majority' of courts," has interpreted and applied Rule 26(a)(2) broadly, "holding that Rule 26 creates a bright-line rule mandating disclosure of all documents, including attorney opinion work product, given to testifying experts."<sup>5</sup> And district

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<sup>3</sup> Ex. 2, Dr. Heilbronner's Deposition Transcript, pp 12-13; see also pp 18 ("I'm reticent to give the exact item, again, for the reason that I can't disclose the test results to anyone except another psychologist for test security issues."), 19 ("I'm not trying to be difficult about that, but I respectfully refuse to give the specific test items from the protocol for the reasons I stated before.").

<sup>4</sup> Fed. R. Civ. P. 26(a)(2)(B)(ii).

<sup>5</sup> *Regional Airport Authority of Louisville v. LFG, LLC*, 460 F.3d 697, 716-717 (6th Cir. 2006).

courts in Michigan, as well as other states, have likewise recognized that parties are required to disclose raw test data that experts relied on in forming their opinions.<sup>6</sup>

As a result, Praxair is entitled to the raw test data that Dr. Heilbronner relied on in reaching his opinion in this case. Praxair sought concurrence from counsel for Guinn in the relief requested in this motion. Although Guinn's counsel would not stipulate to the relief requested, he does *not* oppose this request. Accordingly, Praxair asks this Court to enter an order compelling the production of the raw test data from neurological testing performed by Dr. Heilbronner.

Respectfully submitted,

COLLINS EINHORN FARRELL PC

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Dated: January 25, 2019

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<sup>6</sup> See, e.g., *Spencer v. Huron County*, Case No. 15-cv-12209 (E.D. Mich., September 2, 2016); 2016 WL 4578102, \*4 (ordering the defendants “to provide copies of the examiner’s notes, dictation tapes, or any other documents used and/or or referenced in generating the expert’s report”); *Hirschheimer v. Associated Metals & Minerals Corp.*, Case No. 94 CIV. 6155 (JKF) (S.D. N.Y., December 12, 1995); 1995 WL 736901, \*5 (ordering the defendant “to disclose the raw data from the MMPI-II if it intends to call either Dr. Cancro or Dr. Maxfield as a witness at trial, since the data forms part of the basis for their expert testimony”).

Certificate of Service

The undersigned hereby certifies that on January 25, 2019, my assistant Sarah Sosa filed the foregoing papers with the Clerk of the Court, and all interested parties of record via United States District Court Eastern District of Michigan Northern Division E-Filing System.

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